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**REMARKS**

This paper is responsive to the premature Final Rejection of June 24, 2008. Reconsideration and allowance of claims 1, 2, and 6-20 are requested.

**The Office Action**

Claims 1, 2, 4, 7, 11, and 13-16 stand rejected under 35 U.S.C. § 103 as being unpatentable over Byers (US 4,969,468) in view of Booker (US 2003/0114906).

Claim 6 stands rejected under 35 U.S.C. § 103 as being unpatentable over Byers in view of Booker, further in view of Owen (US 6,148,233).

Claims 8-16 are discussed in paragraph 4 of the Office Action, but no grounds of rejection is applied against them. Accordingly, it is understood that claims 8-10 and 16 contain allowable subject matter.

Claim 12 stands rejected under 35 U.S.C. § 103 as being unpatentable over Byers in view of Booker, further in view of Ingman (US 2002/0082668).

Claim 17 is understood to contain allowable subject matter.

Claims 18-20 are understood to stand allowed.

**The Finality of the June 24, 2008 Rejection is Premature**

In paragraph 1 of the Detailed Action, the Examiner withdraws the *Finality* of the preceding Office Action, i.e., the Office Action of March 25, 2008. With the withdrawal of the *Finality* of the March 25, 2008 Office Action, the Amendment and Request for Reconsideration of May 27, 2008 is understood to have been entered as a matter of right (Amendment responsive to a non-Final Office Action). Further, the Office Action Summary portion of the Office Action of June 24, 2008 states that it is responsive to the May 27, 2008 communication.

Because independent claims 1 and 7, along with claims 2, 6, and 8-16 dependent therefrom were not amended, and because the Office Action of June 24, 2008 applies a new ground of rejection to these unamended claims, it is submitted that the *Finality* of the Office Action of June 24, 2008 is clearly premature and must be withdrawn. Because the claims were not amended in the preceding

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amendment, it is submitted that the new ground of rejection was not necessitated by the applicant's response.

Public PAIR correctly identifies the June 24, 2008 Office Action as a "Non-Final Rejection".

It is further understood that the Amendment of May 27, 2008 has been entered. If the May 27, 2008 Amendment had been denied entry, then the appropriate Patent Office communication would have been an Advisory Action. Because the present Office Action is not an Advisory Action and because it indicates that the *Finality* of the prior Office Action has been withdrawn, it is understood that the Amendment of May 27, 2008 has been entered.

For the reasons set forth above, it is submitted that the *Finality* of the June 24, 2008 Office Action is clearly premature and must be withdrawn.

#### **The Present Amendment Should Be Entered**

First, as set forth above, the *Finality* of the Office Action of June 24, 2008 is clearly premature and must be withdrawn.

Second, the present amendment corrects two errors of a typographical nature and does not alter the scope of the claims. Specifically, inadvertently omitted commas in claims 6 and 7 have been inserted. Because this amendment merely corrects typographical errors, it is submitted that this Amendment should be entered.

#### **The Claims Distinguish Patentably Over the References of Record**

**Claim 1** calls for a monitoring system including a set of sensors and a storage and analysis device in which each sensor includes at least one electrode. The electrode includes a body of electrically conductive elastic material with a working surface exhibiting projections of the electrically conductive elastic material.

By contrast, **Byers** discloses a semiconductor type electric device in which a metal layer 9 and metal cones 12 are deposited on a silicon oxide layer 8. The metal layer and, optionally, lower portions of the cones are coated with a second silicon oxide insulating layer (column 6, lines 38-53). Alternately, the substrate may be silicon, sapphire, or germanium, other ceramics, or biomedical grade plastics

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(column 10, lines 29-34). Thus, the cones of Byers are metal, not an electrically conductive elastic material.

**Booker** fails to cure this shortcoming of Byers. Booker relates to a defibrillator device which includes two electrodes **22, 23**. Both electrodes have a compliance surface with an electrically conductive surface formed entirely from a conductive metal or electrically conductive fibers, e.g., woven from metal fibers, or may be formed from an electrically insulating backing which is coated with an electrically conductive surface material such as by plating, sputtering, or plasma deposition. Thus, Booker advocates the use of woven or smooth electrodes and makes no suggestion of using projections. There is no teaching or suggestion in Booker which would motivate one of ordinary skill in the art to make the cones **11** of Byers of an electrically conductive elastic material. To the contrary, Booker clearly teaches that if one were to modify the electrode structure of Byers, one should remove the cones **11** in favor of a woven metal, electrically conductive fibers, or with a polymer layer, or with a conductive layer formed by plating, sputtering, or plasma deposition. There is no suggestion or motivation in Booker which would motivate one to alter the construction of the cones **11** of Byers.

Moreover, due to the different way in which the Byers and Booker electrodes are used, one would not look to Booker for insights into modifying the electrode of Byers. Byers is directed to an implanted electrode carefully designed such that tissue grows into and around the electrode. By contrast, Booker is concerned with an electrode which makes good electrical contact when pressed against the surface of the heart. Because the electrodes of Byers and Booker have different structures which function in different ways to achieve a different purpose, it is submitted that there would be no motivation to modify or redesign the Byers electrode in light of Booker.

**Claim 6** further calls for a wearable fabric-based elastic belt on which the sensors are mounted. Because the Byers electrode is designed to be implanted and have tissue grow around it, Byers clearly does not disclose nor suggest that its electrode be mounted on an elastic belt. The Booker electrode is configured with electrodes designed to conform to the surface of the heart. Again, there is no

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disclosure of or motivation to mount the cardiac monitoring/pacing electrodes of Booker to mount it on an elastic belt.

**Claim 14** calls for holes to be defined through the electrode body between the integral projections. In Byers, there is no disclosure or suggestion of holes through the electrode body. Rather, Byers merely defines wells around the cones into which the tissue grows. Booker, which discloses a mesh electrode surface on a non-conductive backing fails to cure this shortcoming of Byers.

No references are applied against **claim 17**.

Accordingly, it is submitted that **claim 1 and claims 2, 6, 13-15 and 17 dependent therefrom** distinguish patentably and unobviously over Byers and Booker.

**Claim 7** calls for an electrically conductive elastic layer in which metallic elements are embedded. By contrast, Byers discloses a metal layer on which metal cones are deposited. Byers makes no suggestion of embedding metallic elements in an electrically conductive elastic layer. Booker fails to cure this shortcoming of Byers. Booker does not disclose projections, much less metal projections embedded in an electrically conductive layer. Accordingly, Booker provides no motivation to redesign the Byers electrode to achieve the structure claimed in claim 7.

Again, as set forth above, because the Byers and Booker electrodes have different designs, function in materially different ways to achieve a different end result, it is submitted that there is no motivation to modify the Byers implantable electrode in light of the Booker heart monitoring/pacing electrode.

There is no stated grounds of rejection against **claims 8-10 and 12**.

For the reasons set forth above, it is submitted that **claim 7 and claims 8-12 dependent therefrom** distinguish patentably and unobviously over the references of record.

There being no rejection made against **claims 18-20**, it is understood that **claims 18-20** are allowable.

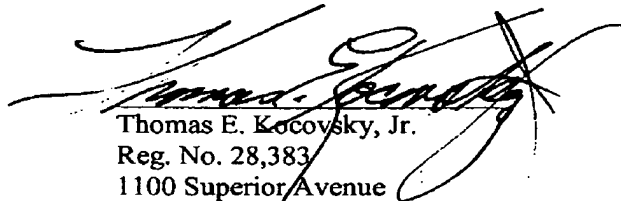
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**CONCLUSION**

For the reasons set forth above, it is submitted that claims 1, 2 and 6-20 distinguish patentably and unobviously over the references of record. An early allowance of all claims is requested.

Respectfully submitted,

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